Supreme Court, U.S.
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No. 02-1282

In The
Supreme Court of the United States

THE HOUSING AUTHORITY OF THE CITY OF DALLAS,

Petitioner,

vs.

HIGHLANDS OF MCKAMY IV AND V COMMUNITY IMPROVEMENT ASSOCIATION, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

AMICUS CURIAE BRIEF OF THE TEXAS ASSOCIATION OF COUNTIES IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether a civil rights defendant's compliance with a court order is a "special circumstance" prohibiting the award of attorney's fees under 42 U.S.C. §1988.

2. Whether "prevailing party" status is justified for rewording a court order as opposed to a material recovery of the relief sought.

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INTEREST OF THE TEXAS ASSOCIATION OF COUNTIES, *AMICUS CURIAE*

The Texas Association of Counties is a Texas non-profit corporation with 254 Texas counties as members. Represented on the Board of Directors of the Texas Association of Counties ("TAC") are the following associations: the County Judges and Commissioners Association, the North and East Texas Judges' and Commissioners' Association, the South Texas Judges' and Commissioners' Association, the West Texas Judges' and Commissioners' Association, the Texas District and County Attorneys' Association, the Sheriff's Association of Texas, The County and District Clerks' Association of Texas, the Texas Association of Tax Assessor-Collectors, the Texas County Treasurers' Association, the Justice of the Peace and Constables' Association of Texas, and the County Auditors' Association of Texas.[1]

TAC and its representative entities are actively engaged in government operations, with limited public funding and divergent constituents. It is imperative that TAC rely upon court orders without fear, prejudice or punishment. The public funding necessary for these operations should not be diverted due to poorly worded, unequally enforced statutes. TAC must be able to confidently rely upon the legal standards used to award attorney's fees.

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[1] The parties have consented to the filing of this brief. Counsel for a party did not author this brief in the whole or in part. No person nor entity, other than the *amicus curiae*, its members, or its counsel, made a monetary contribution to the preparation and submission of this brief. Sup. Ct. R. 37.6.

STATEMENT OF FACTS

This is a civil rights institutional reform case brought by African-Americans who complained of racial discrimination in the administration of Petitioner's, The Housing Authority of the City of Dallas ("DHA", "Housing Authority") public housing programs. The district court had federal question jurisdiction over this case pursuant to 28 U.S.C. §1331. The district court found the Housing Authority liable and, among other things, ordered the Housing Authority to buy or build public housing in "predominantly white areas."

Complying with the district court's order, DHA bought two unimproved tracts in a predominantly white area ("the Sites"), and announced plans to build a small apartment complex on each tract. The Respondents, a group of homeowners living nearby ("the Homeowners"), challenged the Remedial Order and sought injunctive relief to prevent the construction of public housing in their neighborhood. The district court rejected the Homeowners' claim that the Remedial Order discriminated against them on the basis of their race (predominantly white), and denied relief to the Homeowners. The Homeowners appealed the district court's ruling to the United States Court of Appeals for the Fifth Circuit in Case 97-11083.

On March 16, 1999, the Fifth Circuit held that the application of the "predominantly white" requirement deprived the Homeowners of their Constitutionally protected right to equal protection; the Circuit Court reversed the district court and remanded with instructions to eliminate the "predominantly white" requirement from the Remedial Order. The Circuit Court did not, however, enjoin the construction of public housing on the Sites; the

court instead held that its opinion does not preclude the construction of public housing on the Sites, provided the Sites are selected by means of non-racial criteria.

The Homeowners then sought attorney's fees relating to their action for injunctive relief and their appeal of the district court's order denying injunctive relief. After an evidentiary hearing, the magistrate judge recommended denial of the motion for attorney's fees, and the district judge adopted the findings, conclusions, and recommendations of the magistrate judge. The Homeowners appealed from the district judge's order denying attorney's fees.

On appeal, the Housing Authority argued that the Homeowners were not entitled to attorney's fees because (1) the Homeowners did not get the injunctive relief they sued for and, therefore, were not a prevailing party within the meaning of §1988; (2) attorney's fees should not be imposed on DHA when it did nothing more than obey the district court's order; and (3) the Homeowners failed to prove the amount of their fees.

The Court of Appeals reversed, finding that (1) although the Homeowners failed to get the injunctive relief they sued for, they were a prevailing party because they forced the district court to revise the Remedial Order; and (2) the fact that DHA was forced to apply the "predominantly white" requirement at the risk of imprisonment and fine was not a "special circumstance" that would render the imposition of attorney's fees unjust, because (i) "a state actor's good faith compliance with an official or legal requirement that is unconstitutional is not a special circumstance that justifies the denial of attorney's fees"; (ii) "DHA did not litigate the unconstitutional terms of the Remedial Order; it instead chose not to contest the Walker

plaintiffs' motion for summary judgment"; and (iii) "it seems particularly inappropriate to deny the Homeowners attorney's fees because the DHA acquiesced to a remedy that infringed upon the Homeowners' rights." *Walker, et al. v. City of Mesquite, et al.*, 313 F.3d 246, 251 (5th Cir. 2002).

SUMMARY OF ARGUMENT

The compliance with a court order, in a civil rights case, is a special circumstance that prohibits the award of attorney's fees under 42 U.S.C. §1988. Any decision to the contrary plainly warrants this Court's review and jeopardizes the authority of the judicial system. This Honorable Court should grant review to determine the recovery necessary for "prevailing party" status. It is not enough to *reword an order*; the relief rewarded must be material to the relief sought.

ARGUMENT

I. The compliance with a court order, in a civil rights case, is a special circumstance that prohibits the award of attorney's fees under 42 U.S.C. §1988. Any decision to the contrary plainly warrants this Court's review and jeopardizes the authority of the judicial system.

Title 42 of the United States Code §1988, provides, in part, that:

> "In any action or proceeding to enforce the provision [Section] . . . 1983 . . ., the Court in its

> discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the cost. . ."

The statute allows for a discretionary award of attorney's fees to a "prevailing party" unless "special circumstances" would make such an award unjust. 42 U.S.C. §1988 (2002); *Newman v. Piggie Park Ent., Inc.*, 390 U.S. 400, 402, 88 S. Ct. 964, 966 (1968). This legislation was passed to ensure the uniform application of the civil rights laws. Congress intended to achieve consistency among the various circuits and this Honorable Court. S. Rep. No. 94-1011,1N4 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5908, 5909 and 5912; *See also* H. Rep. No. 94-15581, 3 (1976).

To date, the Federal Courts have failed to achieve the consistency in our civil rights laws previously mandated by Congress. There is no standard or guideline for the "special circumstances" exception among the various Federal Circuits and this Honorable Court. There are no guidelines at all in the Third or Sixth Circuits where the "special circumstances" exception was found to justify a denial of attorney's fees. The First, Second, Fifth and Ninth Circuits apply varying standards with varying results. The Third, Seventh and Tenth Circuits reject the current standard for the "special circumstances" exception employed in the Second Circuit. Further, the First Circuit has explicitly rejected the Ninth Circuit's "balancing of equities" approach.[2] Accordingly, the legislative

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[2] *Williams v. Hanover Housing Auth.*, 113 F.3d 1294, 1301 (1st Cir. 1997); *Kerr v. Quinn*, 692 F.2d (2d Cir. 1982); *Scham v. District Courts Trying Criminal Cases*, 148 F.3d 554, 557, 558-59 (5th Cir. 1998); *Bauer v. Sampson*, 261 F.3d 775,785-86 (9th Cir. 2001); *Seattle School Dist. No. 1 v. State of Washington*, 633 F.3d 1338, 1348 (9th Cir. 1980); *Cunningham v. City of McKeesport*, 753 F.2d 262, 268 (3d Cir. 1985),

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consistency commanded by Congress is sorely lacking in the Federal Courts.

This litigation is an excellent example of the confusion in our judicial system. In the case at bar, DHA has been involved in litigation for approximately 18 years. In March of 1992, a 1987 consent decree was vacated and eventually a remedial order was entered in February 1995 affecting DHA. This order, among other things, directed the Housing Authority to buy or build public housing in "predominantly white areas." The term "predominantly white area" was defined as less than 37% Hispanic, Black or other minority. After so many years of court intervention, expense and litigation, DHA merely complied with this order. The Homeowners filed this suit against DHA to enjoin the construction of two new 40-unit public housing projects on sites adjacent to their neighborhoods. Respondents sought to prevent DHA from acquiring sites, or in the alternative, from constructing public housing in their neighborhoods.

As a result of the Homeowner's litigation, the terms of the Remedial Order have been modified; but, the spirit of the pronouncement has not changed in the least. DHA, in its discretion, may continue to develop public housing on the previously purchased sites. Nevertheless, the Fifth Circuit Court of Appeals ruled that the Homeowners were the "prevailing parties" and the "special circumstances"

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vacated and remanded on other grounds and reinstated, 807 F.2d 49 (3d Cir. 1987) ("the statute contains no contingent fee exception"); *Sanchez v. Schwartz*, 688 F.2d 503, 505 (7th Cir. 1982); *Cooper v. Singer*, 719 F.2d 1496, 1501-02 (10th Cir. 1983), *abrogated on other grounds, Venegas v. Mitchell*, 495 U.S. 82, 110 S. Ct. 1679 (1990).

exception was inapplicable. The issue here is whether DHA operated under "special circumstances" that would render an award of attorney's fees unjust.

This Honorable Court requires parties to comply with court orders even if there might be grounds to object to the court order or if the order is subject to substantial constitutional question.[3] To defy a court order may subject the defiant to monetary fines and/or criminal contempt, even though the order may be set aside on appeal. In this way, litigants must place complete confidence in the judicial mandates that emanate from litigation. Where judicial orders are concerned, there is no right of defiance beyond a timely appeal.

The ethical rules of professional conduct also require proper compliance with court orders. For instance, the Texas Disciplinary Rules of Professional Conduct, Rule 3.01; Local Rules of the Northern District of Texas, LR 83.8; and *Dondi Properties Corp v. Commerce Sav. & Loan Ass'n*, 121 FRD 284, 286 (N.D. Tex. 1988). These rules are mirrored throughout our judicial system.

It is not proper to punish a party for complying with a Court's order. To award attorney's fees against a compliant party is unjust. This Honorable Court should grant review to clearly delineate the "special circumstances" necessary to render an award of attorney's fees unjust. This Court

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[3] *GTE Sylvania, Inc. v. Consumers Union of the United States, Inc.*, 445 U.S. 375, 386, 100 S. Ct. 1194, 1201 (1980); *Walker v. City of Birmingham*, 388 U.S. 307, 314-315, 87 S. Ct. 1824, 1828-1829 (1967); *United States v. United Mine Worker's of America*, 330 U.S. 258, 293, 67 S. Ct. 677, 695-696 (1947).

cannot allow the lower court's decision to punish parties for complying with the Court orders.

II. This Honorable Court should grant review to determine the recovery necessary for "prevailing party" status.

The Homeowners sued for an injunction prohibiting and restraining DHA from developing public housing in their neighborhoods. The Homeowners were initially denied "prevailing party" status by the District Court. This decision was reversed on appeal to the Fifth Circuit. The Appellate Court ordered the removal of the phrase "predominantly white area" in a remedial order. This modification did not affect the spirit of the prior remedial order and its author's intent. DHA was allowed to continue, granted on a race-neutral basis, with its development activities. Even now, the Housing Authority may, in its discretion, develop the litigated parcels of land. The Homeowners' effort to stop DHA's development completely failed.

The Homeowners have not "prevailed" in any material or realistic way. The moral satisfaction that results from any favorable statement or re-statement of the law cannot bestow prevailing party status. *Farrar v. Hobby*, 506 U.S. 103, 112, 113 S. Ct. 566 (1992); *Hewitt v. Helms*, 482 U.S. 755, 762, 107 S. Ct. 2672 (1987).

To allow the Appellate Decision to stand, controverts this Court's previous rulings and allows the form of a Court's order to overwhelm the substance of United States Law. This issue deserves review by this Honorable Court.

CONCLUSION

The compliance with a court order, in a civil rights case, is a special circumstance that prohibits the award of attorney's fees under 42 U.S.C. §1988. Any decision to the contrary plainly warrants this Court's review and jeopardizes the authority of the judicial system. This Honorable Court should grant review to determine the recovery necessary for "prevailing party" status. It is not enough to reword an order; the relief rewarded must be material to the relief sought.

Respectfully submitted,

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